IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 70-M of 1998

Date of decision: November 22, 2006.

Paramjit Kaur

.....Appellant.

Vs.

Hardev Singh

.....Respondent.

PRESENT: Mr. A.S.Virk, Advocate for the appellant.
None for the respondent.

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JUDGMENT

M.M.Aggarwal, J.

This is an appeal against judgment dated 19.3.1998 of Addl. District Judge, Faridkot whereby petition filed under Section 13 of the Hindu Marriage Act, 1955 by respondent Hardev Singh was allowed and marriage between the parties was dissolved by a decree of divorce.

Hardev Singh who was originally petitioner before the Court of District Judge, Faridkot happens to be Constable in the Police Department.

Earlier one Shri R.S.Rangpuri Advocate had put in appearance for Hardev Singh. Then at some hearing Shri S.K.Chawla and G.S.Sandhu Advocates had appeared and made application for exemption from personal appearance of the petitioner. Thereafter, none had put in appearance, on his

behalf.

The marriage in this case had taken place on 10.12.1990. This divorce petition under Section 13 of the Hindu Marriage Act was filed on the ground of cruelty and desertion. One son is stated to have born out of the marriage and is living with the wife, who is appellant now. As per the averments in the petition, Paramjit Kaur had been treating the petitioner Hardev Singh with cruelty but then on 24.12.1993 Hardev Singh had taken back Paramjit Kaur to his house upon intervention of the Panchayat but thereafter Paramjit Kaur did not mend her ways and then Paramjit Kaur had left the house of Hardev Singh on 20.1.1994 without his consent and was staying with her parents. That she had gone with an excuse to meet them.

This petition for divorce was filed on 11.6.1994. In the petition, Hardev Singh had stated that even when he had taken back Paramjit Kaur on 24.12.1993, he did not have any sexual intercourse and had not forgiven the lapses made by Paramjit Kaur.

Counsel for the appellant had argued that when Hardev Singh and Paramjit Kaur had started living together after 24.12.2003 then the default, if any, stood condoned. It was further argued that as per Section 13 Sub-section-1 clause ib of the Hindu Marriage Act, the ground of desertion will be available only when it had been for a continuous period of not less than 2 years immediately preceding the presentation of the petition.

The parties admittedly started living together from 24.12.1993 onwards and stayed together up to 20.1.1994. The petition was filed on 11.6.1994. As such, it cannot be said that the respondent-wife had deserted the respondent continuously for a period of not less than 2 years immediately preceding the presentation of the petition.

Cruelty is a ground available for grant of divorce under clause (ia) of sub-section (1) of Section 13 of the Hindu Marriage Act. As per Section 23 (1) (b) of the Hindu Marriage Act, the ground of cruelty in a petition for dissolution of marriage under Section 13 shall be available only where petitioner had not condoned the cruelty in any manner.

When due to intervention of the Panchayat petitioner Hardev Singh had rehabilitated Paramjit Kaur in his own house and they had started living together then cruelty, if any, before that date stood condoned. There is no allegation that Paramjit Kaur had practiced any cruelty after 24.12.1993. According to Hardev Singh, she had just left on 20.1.1994 on the pretext of meeting her parents and then did not come back.

Under these circumstances, no valid ground of divorce was available to Hardev Singh husband.

This appeal as such is accepted. The judgment and decree dated March 19, 1998 of Addl. District Judge, Faridkot shall stand set aside.

(M.M.Aggarwal)
Judge

November 22, 2006
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